

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 864 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
- J
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

RAMANBHAI PUNJABHAI SHARMA

Versus

STATE OF GUJARAT

Appearance:

Shri M.R.Anand, Advocate, for the Appellant -
Complainant.

Shri K.P.Rawal, Additional Public Prosecutor, for
Respondent No.1 - State.

Shri A.B.Munshi, Advocate, for Shri A.J.Patel,
Advocate, for Respondent No.2 - Accused.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 06/12/96

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Judicial Magistrate (First Class) at Anand on 30th October 1986 in Criminal Case No.537 of 1982 is under challenge in this appeal by special leave under Section 378 of the Code of Criminal Procedure, 1973 (the Code for brief). Thereby the learned trial Magistrate acquitted respondent No.2 - accused of the offences punishable under the relevant provisions contained in Section 16 of the Prevention of Food Adulteration Act, 1954 (the Act for brief).

2. The facts giving rise to this appeal move in a narrow compass. The appellant - complainant was working as the Food Inspector for the municipal area of Anand at the relevant time. Respondent No.2 was running his grocery shop at Shop No.F-9 in Super Market, Station Road, Anand. At about 9.30 a.m. on 10th December 1981, the appellant - complainant purchased chilli powder to the tune of 450 gms. from respondent No.2 - accused for the purpose of its analysis by the Public Analyst. The sample was divided in three parts and each part was properly packed and the packet was properly sealed according to law in presence of the panchas. One sample packet was forwarded to the Public Analyst at Vadodara for its analysis and the remaining two sample packets were handed over to the local authority. On receipt of the report from the Public Analyst, the sample was found to be adulterated. Thereupon, after obtaining the necessary consent from the concerned authority, a complaint was filed by the appellant - complainant in the Court of the Judicial Magistrate (First Class) at Anand against respondent No.2 - accused charging him with the offences punishable under the relevant provisions contained in Section 16 of the Act. It came to be registered as Criminal Case No.537 of 1982. A notice of launching of the prosecution was served to respondent No.2 - accused under Section 13 (2) of the Act. Thereupon, respondent No.2 - accused demanded examination of one sample packet by the Central Food Laboratory at Pune. Thereupon, a sample packet was called for from the local authority and it was forwarded to the Central Food Laboratory at Pune for analysis and report. The report from the Central Food Laboratory at Pune was received. It also showed the sample to be adulterated. The charge against respondent No.2 - accused was framed on 23rd November 1984. He did not plead guilty to the charge. Thereupon, he was tried. After recording the prosecution evidence and after recording the further statement of respondent No.2 - accused under Section 313 of the Code and after hearing arguments, by his judgment and order passed on 30th October 1986 in Criminal Case No.537 of

1982, the learned Judicial Magistrate (First Class) at Anand acquitted respondent No.2 - accused of the charge levelled against him. That aggrieved the original complainant. He has thereupon invoked the appellate jurisdiction of this court by means of this appeal after obtaining its leave under Section 378 (4) of the Code.

3. The learned trial Magistrate has acquitted respondent No.2 - accused mainly on the ground that the sample of chilli powder purchased by the appellant - complainant from respondent No.2 - accused was not a representative sample, and as such its analysis would not help the prosecution in fastening the criminal liability to respondent No.2 - accused. Learned Advocate Shri Anand for the appellant - complainant has taken me through the evidence on record in support of his submission that the learned trial Magistrate was not justified in coming to the conclusion that the sample of chilli powder was not a representative sample.

4. It is not necessary to examine the aforesaid submission for the simple reason that this appeal can be disposed of on another ground covered by the rulings of this court. As rightly submitted by learned Advocate Shri Munshi for respondent No.2 - accused, there was breach of Rule 4 of the Prevention of Food Adulteration Rules, 1955 (the Rules for convenience) inasmuch as the Analyst at the Central Food Laboratory at Pune did not compare seals on the container with the specimen seal separately sent to him. Mere finding that the seals were in tact would not be compliance with the relevant provisions contained in Rule 4 of the Rules as submitted by learned Advocate Shri Munshi for respondent No.2 accused.

5. My attention has been invited to the rulings of this court in the case of CLEMENT CHHOTALAL CRISTIAN v. P.S.PARMAR reported in 1992 (1) 33 (1) Gujarat Law Reporter at page 434 and in the case of LAXMICHAND BHAILAL THAKKAR v. STATE OF GUJARAT reported in 1996 (1) Gujarat Law Herald at page 266. In both the aforesaid rulings, the seals on the container and the outer cover were not examined, and as such a doubt would arise whether or not the sample purchased from the accused was sent to the concerned laboratory for examination. In that view of the matter, it was held that the report of analysis would stand vitiated and the accused would be entitled to acquittal on that ground alone.

6. Sitting as a single Judge, the aforesaid rulings of this court are binding to me. Even otherwise, I am in

respectful agreement therewith. The aforesaid rulings are on all fours applicable in the present case. As pointed out hereinabove, the Analyst in the Central Food Laboratory at Pune has not compared the seals on the container and the outer cover with the specimen of the seal impressions sent separately. In that view of the matter, respondent No.2 - accused would be entitled to acquittal in view of the aforesaid rulings of this court.

7. In view of my aforesaid discussion, the impugned judgment and order of acquittal deserves to be affirmed in this appeal though on a different ground.

8. In the result, this appeal fails. It is hereby dismissed.

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